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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~433.~~ 261

NAPOLEON B. VAN SLYKE, PLAINTIFF IN ERROR,

vs.

THE STATE OF WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

FILED OCTOBER 17, 1870.

14.

# SUPREME COURT OF THE UNITED STATES.

## No. 493.

NAPOLEON B. VAN SLYKE, PLAINTIFF IN ERROR,

vs.

THE STATE OF WISCONSIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

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4 State of Wisconsin supreme court.

NAPOLEON B. VAN SLYKE, PLAINTIFF,
*vs.*
THE STATE OF WISCONSIN, DEFENDANT.

The above-named plaintiff, Napoleon B. Van Slyke, complains against the above-named defendant, The State of Wisconsin, pursuant to the statute in such case made and provided, and respectfully shows to this court that, on the 18th day of May, A. D. 1865, at the city of Madison, in said State, The First National Bank of Madison aforesaid was a banking corporation, duly organized and existing under and pursuant to the several acts of Congress then existing concerning national banks, and commonly called the national banking acts, with a capital stock of fifty thousand dollars, all of which then was, and has ever since continued to be, invested in stocks, bonds, and securities of the United States; that the capital stock of said banking corporation was divided into five hundred shares, of one hundred dollars each; and that the names of
5 shareholders in said corporation and the number of shares then owned by them respectively was as follows, to wit:

| | |
|---|---|
| Napoleon B. Van Slyke, the said plaintiff, owned one hundred shares | $10,000 |
| George A. Mason owned one hundred shares | 10,000 |
| Timothy Brown owned fifty shares | 5,000 |
| Samuel D. Hastings owned fifty shares | 5,000 |
| Benjamin F. Hopkins owned fifty shares | 5,000 |
| Chauncey L. Williams owned fifty shares | 5,000 |
| Levi B. Vilas owned thirty shares | 3,000 |
| Marcus Kohner owned fifteen shares | 1,500 |
| William R. Taylor owned ten shares | 1,000 |
| Daniel Read owned ten shares | 1,000 |
| J. M. Bowman owned ten shares | 1,000 |
| David Atwood owned ten shares | 1,000 |
| William Vroman owned five shares | 500 |
| Charles H. Luce owned five shares | 500 |
| And John A. Johnson owned five shares | 500 |

And that each of said parties has continued to own and hold said shares so held and owned by him as aforesaid ever since the time aforesaid; that the said Napoleon B. Van Slyke then was and still is president of said corporation; and that Timothy Brown then was and still is vice-president thereof, and Georgia A. Mason then was and still is cashier thereof, and said banking corporation was then and still is located and doing business at Madison aforesaid, under the authority aforesaid.

6 And the said plaintiff further shows that afterwards, and on or about the 2nd day of October, A. D. 1865, one William T. Leitch, then assessor of the city of Madison aforesaid, returned to and filed with the clerk of the board of supervisors of Dane County, in said State, a return of the shareholders of the shares of stock of said banking corporation, and the amount and number of the shares thereof held by each of them, which said return showed that said shares were held and owned by the persons and to the number and amount as hereinbefore stated; that the clerk of the board of supervisors of said county immediately forwarded a copy of said return certified under his hand and seal of office, to the treasurer of said State, who received and filed the

same in his office on the 14th day of October, A. D. 1865, which said return and certified copy thereof were made and transmitted as aforesaid under and by virtue of chapter four hundred of the acts of the legislature of the said State for the year 1865; and that, immediately upon the receipt thereof, the State treasurer of said State assessed upon each of said shares, under said act, a tax of one and one-half per cent., which said tax, so assessed and charged, amounted to the sum of one
7 dollar and fifty cents upon each of said shares, and to the sum of seven hundred and fifty dollars upon the entire amount of the shares of the capital stock of said banking corporation so held as aforesaid, and then and there proceeded to notify the said several holders of said shares and their agent, the banking corporation aforesaid; that the said tax had been so assessed and charged against said shares, and that payment thereof would be required under the act aforesaid, and gave out and notified them that, unless the said taxes, so assessed and charged as aforesaid, should be paid to him as such treasurer, as required by said act, *that* he should proceed to enforce the lien which he pretended and claimed to have, as such treasurer, upon the shares upon which the same had been so assessed and charged as aforesaid, under and by virtue of the provisions of said act, by a sale of the said shares of the capital stock of said banking corporation, upon which it had been so assessed and charged under the authority of said act; and he then and there notified the parties aforesaid that, as such officer, he should proceed without delay to enforce and execute all and singular the provisions of said act, in case said tax so charged and assessed, and claimed by him to be due as aforesaid, should not be paid.

And the said plaintiff further shows that, in order to save the
8 said several shares so owned by said several shareholders from sale by said treasurer under the provisions of said act, and to avoid the effect of said pretended lien on said shares, which the said State treasurer claimed to have thereon, under and by virtue of the provisions of the act aforesaid, for the taxes so assessed and charged thereon, and to release said shares from the said claim and the lien thereon so claimed as aforesaid, and to prevent the threatened sale of said shares in satisfaction of said lien and said taxes, and in order to avoid the costs and expenses of advertising and selling the same, and to avoid the injury which would result to the credit and financial standing of said banking association by a seizure and sale of the shares of its capital stock for said taxes, and the embarrassment and difficulties which would have necessarily resulted therefrom, the said several shareholders were afterwards, and on the 9th day of December, A. D. 1865, forced and compelled to pay to the treasure of said State the total amount of said taxes so charged and claimed by him, under the authority aforesaid, in the proportions of the amount of the shares so held and owned by each of them as aforesaid; that said payment was made under a protest by them in their behalf, that the said taxes so assessed, charged, and claimed were illegal, void, and inequitable, and wholly destitute
9 of any foundation or authority whatever; which said money was so received and retained by the said defendant, by its treasurer aforesaid, to its use and benefit; by means whereof the said defendant then became and was indebted to the said several shareholders in said banking corporation in the amount so paid as aforesaid; that thereafter fourteen of the said several shareholders, to wit, George A. Mason, Timothy Brown, Samuel D. Hastings, Benjamin F. Hopkins, Chauncey L. Williams, Levi B. Vilas, Marcus Kohner, William R. Taylor, Daniel Read, J. M. Bowman, David Atwood, William Atwood, William Vro-

man, Charles H. Luce, and John A. Johnson, sold, assigned, and transferred to this plaintiff their, and each of their, right and claim against said State for the repayment of the sum so paid to its treasurer as aforesaid, of all of which the said defendant then had notice, by means whereof the said defendant became, and was, and still is, indebted to this plaintiff in the sum of seven hundred and fifty dollars, with interest thereon from the 9th day of December, A. D. 1865, at the rate of seven per cent. per annum.

And the said plaintiff further alleges that said taxes were assessed and charged against said shares of said shareholders without any authority of law, and that by law the same were not and are not taxable; that the said act of the legislature of Wisconsin hereinbefore mentioned was and is wholly void and of no effect; and the said treasurer had no right to demand or receive said money, nor has the State any legal or equitable right to retain the same.

And the said plaintiff further shows that at the annual session of the legislature of said State for the year 1867, to wit, on the 6th day of April, A. D. 1867, at Madison aforesaid, he presented to the said legislature, in due form of law, his aforesaid claim, properly verified, for said sum of seven hundred and fifty dollars for allowance, to the end that the same might be paid to this plaintiff by the treasurer of said State; that the legislature of said State afterwards, and on the 8th day of April, A. D. 1867, at Madison aforesaid, and during the session aforesaid, refused to allow said claim, or any part thereof, wherefore the said plaintiff brings his action to recover the same in this court, pursuant to the statute in such case made and furnished.

The said plaintiff, by reason of the premises, demands judgment against the said defendant for the said sum of seven hundred and fifty dollars, with interest thereon from the 9th day of December, A. D. 1865, besides the costs of this action.

GREGORY AND PINNEY,
*Pl'ff's Att'ys.*

State of Wisconsin supreme court.

NAPOLEON B. VAN SLYKE, PLAINTIFF,
*against*
THE STATE OF WISCONSIN, DEFENDANT.

To the attorney general of said State, Hon. Charles R. Gill:

SIR: You are hereby notified that, on the 23d day of May, A. D. 1867, a complaint in the above-entitled action, with a copy of which you are herewith served, was filed in the office of the clerk of the supreme court of said State at Madison, Wisconsin, and you are hereby notified to answer or demur thereto on or before the third day of July, 1867.

Dated May 23d, A. D. 1867.

Yours, respectfully,

GREGORY AND PINNEY,
*Att'ys for Plaintiff.*

(Indorsed:) Supreme court. Napoleon B. Van Slyke ag't The State of Wisconsin. Complaint and notice to plead. A personal service of the within admitted May 23rd, A. D. 1867, Cha's R. Gill, att'y gen'l. Filed May 23rd, '67, L. F. Kellogg, clerk S. C. Wis. Gregory and Pinney, pl'ff's att'ys.

12 And afterwards, to wit, on the 28th day of June, A. D. 1867, came Charles R. Gill, esq., attorney general of the State of Wisconsin, and filed his demurrer to the complaint aforesaid in the words and figures following, that is to say:

Supreme court.

NAPOLEON B. VAN SLYKE, PLAINTIFF,
*vs.*
THE STATE OF WISCONSIN, DEFENDANT.

Now comes the said defendant by Charles R. Gill, its attorney, and demurs to said plaintiff's complaint herein, for the reasons that it appears upon the face of said complaint that it does not state facts sufficient to constitute a cause of action.

CHARLES R. GILL,
*Attorney General.*

(Indorsed:) Supreme court. N. B. Van Slyke vs. The State of Wisconsin. Demurrer. Rec'd copy June 28th, 1867, Gregory and Pinney, pl'ff's att'ys. Filed June 28th, 1867, L. F. Kellogg, clerk S. C. Wis.

13 And afterwards, to wit, at the September term of said supreme court, begun and held at the capitol, in the city of Madison aforesaid, on the second Tuesday, to wit, the tenth day of September, A. D. 1867, on the eleventh day of the term, to wit, on the twentieth day of September, A. D. 1867, the following further proceedings were had in said cause, that is to say:

NAPOLEON B. VAN SLYKE, PLAINTIFF,
*vs.*
THE STATE OF WISCONSIN, DEFENDANT. } Complaint under the statute.

And now at this day came the parties herein by their attorneys, and the argument of this cause having been commenced by Messrs. Gregory and Pinney for the said plaintiff, and the attorney general and P. L. Spooner, esq., for the said defendant, and there not being now sufficient time to complete the same, it is continued for further argument.

And afterwards, to wit, on the twelfth day of the term aforesaid, on the twenty-first day of September, A. D. 1867, the following further proceeding were had, that is to say:

14 NAPOLEON B. VAN SLYKE, PLAINTIFF,
*vs.*
THE STATE OF WISCONSIN, DEFENDANT. } Complaint under the statute.

And now at this day came the parties herein by their attorneys, and the argument of this cause having been resumed, and there not being now sufficient time to complete the same, it is continued for further argument.

And afterwards, to wit, on the fifteenth day of the term aforesaid, on the twenty-fourth day of September, A. D. 1867, the following further proceedings were had, that is to say:

NAPOLEON B. VAN SLYKE, PLAINTIFF,
*vs.*
THE STATE OF WISCONSIN, DEFENDANT. } Complaint under the statute.

And now at this day came the parties herein by their attorneys, and the argument of this cause having been resumed and completed, and the court, not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

And afterwards, to wit, on the fifty-first day of the term aforesaid, on the eighteenth day of January, A. D. 1868, the following further proceedings were had, that is to say:

NAPOLEON B. VAN SLYKE, PLAINTIFF,
*vs.*
THE STATE OF WISCONSIN, DEFENDANT. } Complaint under the statute.

*Ordered*, that this cause be, and the same is hereby, continued until the next term of this court under advisement.

And afterwards, to wit, at the February term of said court, to wit, on the eleventh day of February, A. D. 1868, the same being the second day of the term, the following further proceedings were had in said cause, that is to say:

NAPOLEON B. VAN SLYKE, PLAINTIFF,
*vs.*
THE STATE OF WISCONSIN, DEFENDANT. } Complaint under the statute.

Opinion, DIXON, C. J.:

This cause came on to be heard on the demurrer of the said defendant to the complaint of the said plaintiff, and was argued by counsel. On consideration whereof—

It is now here ordered and adjudged by this court that the said demurrer be, and the same is hereby, sustained.

And thereupon the opinion of the court was filed by the Hon. Luther S. Dixon, chief justice of said court; which said opinion is in the words and figures following, that is to say:

Supreme court.

NAPOLEON B. VAN SLYKE
*ag't*
THE STATE OF WISCONSIN.

The first question to be considered is, whether the 41st section of the national banking act, authorizing taxation by the States of shares in the national banks, requires that the tax imposed by the State upon the State banks shall be, eo nomine, a tax upon the shares of those banks. Taxation by State authority of national banks must be upon the shares, because the law of Congress so expressly provides. Must the tax imposed by the State upon the State banks be also upon the shares in those banks before the State can lawfully exercise the power conferred by Congress to tax the shares in the national banks? This is a question as to the proper construction of the 41st section above referred to, and

one which must be ultimately answered by the Supreme Court of the United States. It is a question which lies at the very foundation of the proceedings we are required to investigate. If the State banks must be taxed upon the shares, and in no other way, in order to justify the levying of a tax by the State upon the shares in the national banks, that is decisive of this case, and not of this case only, but of
18 every other case arising under our banking law as it stood prior to the amendment by act of the legislature and vote of the people in 1866, so as to require the payment of taxes upon the shares in the State banks instead of taxes upon the amount of capital stock of such banks, as theretofore provided by law. Is such the true construction of the section in question? If it is, then it will readily be seen that in many of the States, and in this State in particular, the just and beneficent designs of Congress in authorizing the State to tax the shares in the national banks were, for a considerable period of time at least, to be defeated by the very terms of the act by which the authority was granted. It will hardly be contended that such was the intention of Congress. The intention clearly was, that the property or capital of citizens thus employed should be subject to the same, but not to a greater, rate of taxation than is imposed by the State upon the property or capital of the citizens devoted to other purposes, and which is not especially exempt from taxation. It would not, perhaps, be strictly accurate to say that this question of the proper construction of the law of Congress has been directly adjudicated by the Supreme Court of the United
19 States. It has been supposed by some, however, to have received a practical exposition in that court, which is to the effect that the tax imposed by the State upon the State banks need not, necessarily, be upon the shares, in order to justify the levying of a tax by the State upon the shares in the national banks. Such is the opinion of the supreme court of the State of Ohio in Frazer vs. Seibern, 16 Ohio St. R., 620, 621. After referring to the cases of Van Allen vs. The Assessors, 3 Wallace, 573, and People vs. The Commissioners, 4 Wallace, 244, that court says: "It must be premised that, in the cases referred to, the Supreme Court of the United States have put a more liberal construction upon the word 'shares,' as here used, in favor of the power to tax, than they have upon the same word when designating shares in the national banks. That court holds that the equivalent taxation necessary to justify a tax upon the shares in national banks may either be upon the shares of the individual stockholders in the State banks, and assessed against the stockholders, or it may be upon the capital of the bank, and assessed against the bank itself, provided only that it be a full equivalent. The tax against the owners of shares in the national banks must not exceed that imposed in some form upon the State banks or their stockholders." To the same effect is the opinion of the su-
20 preme court of Minnesota in the case of County Treasurer vs. Webb and Harrison, 11 Minn. R., 512. On the other hand, the supreme court of Iowa, in the recent case of Hubbard vs. Supervisors of Johnson Co., and other cases decided at the same time, seems to have arrived at the directly opposite conclusion; and so the reporter states the point decided in Bradley vs. The People, 4 Wallace, 459.

The words of the act upon which this conflict of opinion has arisen are found in the second proviso of the 41st section, which reads as follows:

"*Provided further*, That the tax so imposed under the laws of any State upon the shares of any of the associations authorized by this act

shall not exceed the rate imposed upon the shares in any of the banks organized under authority of the State where such association is located."

The object of this proviso is apparent. It is a limitation of the general power previously conferred, intended to secure the national banks against any discrimination unfriendly to them, and in favor of the State banks in matters of State taxation. Such security being easily attained without any change by Congress of the mode of taxing the State banks by the States, and the same being fully provided, it seems somewhat inconsistent with the language of the proviso that it should be held
21 to have still further effect, and that Congress has prescribed a mode by which the State banks must be taxed. If such had been the intention of Congress, language adapted to that purpose would, no doubt, have been used, and the proviso would have read something like this:

"*Provided further*, That the banks organized under authority of the State where such association is located shall be taxed upon the shares in such banks, and that the tax imposed under the laws of any State upon the shares of any of the associations authorized by this act shall not exceed the rate imposed by the same State upon the shares of any of the State banks."

It is furthermore to be considered that the mode of taxing the State banks by the States is not a matter of national concern, only so far as it may infringe the rule of taxation prescribed by Congress for the national banks. Within that rule the States may well be at liberty to tax their own banks as they see fit, and I cannot but think it was the intention of Congress not to interfere with them. I think, therefore, that the word "shares," as here used with reference to the State banks, may well receive a more liberal construction than the same word when elsewhere employed to designate the shares of the national as being the proper subjects of State taxation. In the one case it is used to
22 specify the particular property which may be taxed; in the other not for that purpose, but in a more general sense, in a clause intended only to limit the rate of such taxation.

Now, on turning to the decisions of the Supreme Court of the United States, I find this view greatly strengthened, if not fully supported by them. The case of Van Allen vs. The Assessors may almost be said to be entirely decisive of the question. That case went up from the court of appeals of New York upon the enabling act passed by that State in March, 1865, which taxed the State banks, not upon their shares, but upon their capital. By the same act taxes at the same rate were imposed upon the shares in the national banks, not exceeding their par value. The court held the act invalid, because the capital of the State banks might consist of the bonds of the United States, which were exempt from State taxation.

"It is easy to see," say the court, "that this tax on the capital is not an equivalent for the tax on the shares of the stockholders."

This was assuming, in the clearest possible manner, that the act was not invalid because it taxed the State banks upon their capital and the national banks upon the shares, but that that mode of taxation was unobjectionable, provided it was equivalent or did not infringe the
23 rule of equality established by Congress. It is difficult to conceive why the court should have decided the case on this ground if the other objection had really been supposed to exist; for, as I have

said, it is an objection which goes to the foundation of the proceeding, and one which must have met the court at the very threshold. Again, the case of Bradley vs. The People was decided on the same ground.

Referring to Van Allen vs. The Assessors, the court say that "the tax in that case was attempted to be sustained on the same ground relied on here, that the tax on the capital was equivalent to a tax on the shares, as respected the shareholders. But the position was answered that, admitting it to be so, yet, inasmuch as the capital of the State banks may consist of the bonds of the United States, which are exempt from State taxation, it was not easy to see that the tax on the capital was an equivalent to a tax on the shares."

I find no other decision by that court, or opinion intimated, in conflict with the position assumed in these and other cases, and I, therefore, conclude that the States may lawfully tax the capital of their own banks and the shares of the national banks, provided such taxation be not unequal, or so imposed as to discriminate in favor of the State banks and against the national banks.

Having arrived at this conclusion, the next point of inquiry is,
24 whether the tax of one and one-half per cent. imposed by the law of this State upon the State banks was in all cases equivalent to the tax of the same rate assessed upon the shares in the national banks by the act of April 8, 1865. (Laws 1865, chap. 400.) It is not denied that taxes thus imposed are or would be equivalent, provided no part of the capital of the State banks was exempt from taxation; but as the capital of the State banks may, under our banking law, consist of the bonds of the United States not liable to State taxation, it is insisted that the same objection existed here that existed in New York and some other States where the question has arisen. To this it is answered that our banking law differed from that of New York and the others in this, that the tax imposed on the capital of our State banks was a tax annexed to the franchise as a royalty for the grant, and, consequently, one which the banks must pay, even though the securities deposited did consist of stocks of the United States otherwise exempt from taxation. This position was sanctioned by the Supreme Court in Bank of Commerce vs. New York City, 2 Black, 628, and is undoubtedly correct. The banks of this State were taxed, not upon valuation, like the property of individuals, but on the amount of nominal capital, with-
25 out regard to loss or depreciation. (R. S., C. 71, §20.) The sum thus exacted by the State was one of the conditions upon which the franchise was granted, and as such was not in conflict with any right of the federal government.

It only remains to be be considered whether the act of April 8th is in conflict with the first proviso of the 41st section, or with our own constitution. The material words of that proviso are, that the shares of the national banks shall be taxed "not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." It is provided by section 3 of the act of April 8th that the shares in the national banks shall be taxed on the par value. The seventh section provides that, whenever the tax assesed upon other moneyed capital in the hands of individual citizens of this State shall be less than one and one-half per centum, it shall be the duty of the State treasurer to reduce correspondingly the tax upon the stock of said banking associations, and to require the payment only of such reduced tax. As suggested by counsel for the State, the only particular of this legislation which seems liable to any objection is that the shares

in the national banks are required to be taxed at their par value. If the shares in any national bank should at any time be worth less
26 than par, then the tax upon them at par might exceed the rate imposed upon other moneyed capital which is taxed at its real value. As suggested by counsel also, this objection if it exists, might be easily removed by providing that the shares in the national banks shall be assessed at their value, never, however, above par. But this is an objection which does not arise in the present case. This is an equitable action in the nature of an action for money had and received, brought against the State to recover back money paid for taxes upon the shares of the First National Bank of Madison. In such a case the plaintiff must show that he is entitled in equity to recover back the money demanded. It is not enough to show that the proceedings to levy and collect the taxes were technically defective at law. The complaint does not allege that the shares in this bank were worth less than par. Neither does it allege that the assessment upon the shares was at a greater rate than was assessed upon other moneyed capital in the hands of individuals. In the absence of such averments, the court cannot presume such facts to have existed, but must presume the contrary. The complaint therefore in this respect fails to state a cause of action.

27 As to the act being in conflict with the clause in our State constitution prescribing a uniform rule of taxation, I have only this to say, that it is provided by the Constitution of the United States that that Constitution "and the laws of the United States made in pursuance thereof * * * * * * shall be the supreme law of the land, and the judges of every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." If Congress, in the exercise of its supreme authority, has prescribed a rule or mode of taxation different from that prescribed by the constitution of any State, the legislature of the State must be governed by rule prescribed by Congress instead of that fixed by the constitution of the State. (See County Treasurer vs. Webb and Harrison, 11 Minn., 506.) I think, also, that there is great force in the argument of counsel that the provision of our State constitution is inapplicable to this new species of property which has been called into existence by the superior power of the federal government.

In my judgment, the demurrer to the complaint should be sustained.

Demurrer sustained.

PAINE, J., did not sit in this case, having been of counsel.

28 And afterwards, to wit, at the January term of said court, begun and held at the city of Madison aforesaid, on the second Tuesday, to wit, on the eleventh day of January, A. D. 1870, on the forty-seventh day of the term, to wit, on the second day of April, A. D. 1870, the following further proceedings were had in this cause, that is to say:

NAPOLEON B. VAN SLYKE, PLAINTIFF,
vs.
THE STATE OF WISCONSIN, DEFENDANT.

This cause came on to be heard on the demurrer of the said defendant to the complaint of the said plaintiff, and was argued by Mr. Pinney, of counsel for the plaintiff, and the attorney general and Mr. Spooner, of

counsel for the said defendant; and the said plaintiff having claimed in his own behalf, and as assignee of the other stockholders in said complaint mentioned, exemption from the taxation mentioned in said complaint, under and by virtue of the eighth section of the first article of the Constitution of the United States, and under and by virtue
29 of the act of Congress approved 25th of February, A. D. 1862, entitled "An act to provide a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof," approved February 25th, 1863; and under and by virtue of the act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and particularly under the 41st section of the last-named act, upon the ground that the whole capital stock of the First National Bank at Madison, in said complaint mentioned, is invested in bonds of the United States, and on the ground that said assessment and taxation in said complaint complained of was not made in conformity with the said acts of Congress, or with the constitution and laws of the State of Wisconsin; and particularly that the same was not in conformity with the 41st section of the aforesaid act of Congress, approved June 3d, 1864, in that by the laws of Wisconsin such shares in State banks were not, and are not, taxable at all, and in that said shares in national banks were not included in the valuation of the personal property of the persons holding such shares, in the assessment of taxes imposed by or under State authority; and the validity of the authority claimed to assess and impose said taxes under the statute of said State, entitled "An act to
30 provide for taxing the shares of stock of national banking associations," approved April 8th, 1865, and the validity of the sixteenth section of the statutes of said State, entitled "An act to authorize the business of banking in the State of Wisconsin," approved April 19th, 1852, on the ground of repugnance to the aforesaid provisions of the Constitution of the United States, and the construction of said provisions of the Constitution of the United States, and of each of said acts of Congress being drawn in question in this cause, so far as is hereinafter stated or made to appear. Upon consideration whereof, it is by this court now here considered and adjudged that, under the sixteenth section of the statute of this State above-mentioned as approved April 19th, 1852, every bank organized under the authority of this State was and is bound to pay a tax to the State semi-annually of three-quarters of one per centum on the amount of its capital stock, notwithstanding such capital may be invested wholly in the bonds or securities of the United States; that a tax of one and a half per cent. upon the amount of the capital stocks of said banks rated at par is equivalent to a tax of like per cent. upon the par value of the shares of such banks by name, and that under the 41st section of the act of Congress, approved June 3d, 1864, to provide a national currency secured by a pledge of
31 United States bonds, and to provide for the circulation and redemption thereof, the shares in State banks in this State need not be taxed directly, and eo nomine, in order to authorize the taxation by the authority of this State of shares in national banks organized under the aforesaid acts of Congress; and that the statute of this State above mentioned as approved April 8th, 1865, so far as the same required a tax to be assessed and levied upon the shares of the national banks in this State, not exceeding the rate of tax so imposed upon the banks organized under the authority of this State, and not at a greater

rate than was assessed upon other monied capital in the hands of individual citizens of this State, (at the respective places where such national banks were located,) is not repugnant to the Constitution of the United States, nor to the constitution of this State, nor to any of the acts of Congress above mentioned; and it is further considered and adjudged by the court that, as there is no allegation in said complaint that the shares in said First National Bank of Madison were at the time of said assessment worth less than par, nor that the said shares were assessed or taxed at a greater rate than other monied capital in the hands of individual citizens of this State, at the place where said bank was located, the said complaint fails to show a cause of action.

32 Wherefore it is considered that said complaint is insufficient in law, and that the said plaintiff take nothing thereby; and that the said defendant go thereof without day, and recover against the said plaintiff its proper costs and charges in and about its defence expended, to be taxed; and that the defendant have execution thereof, &c.

33 Supreme Court of the United States.

NAPOLEON B. VAN SLYKE }
*vs.*
THE STATE OF WISCONSIN. }

Know all men by these presents that we, Napoleon B. Van Slyke, and George A. Mason and Timothy Brown, all of Madison, Wisconsin, are firmly held & bound unto the State of Wisconsin in the sum of three hundred dollars, to be paid to the said State of Wisconsin, its successors, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 12th day of April, A. D. 1870.

Whereas the above-named Napoleon B. Van Slyke hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above-named Napoleon B. Van Slyke shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

N. B. VAN SLYKE. [SEAL.]
GEORGE A. MASON. [SEAL.]
34 TIMOTHY BROWN. [SEAL.]

Sealed and delivered in the presence of—
S. U. PINNEY.

STATE OF WISCONSIN, *Dane County, ss:*

George A. Mason and Timothy Brown, both of said county, each being duly sworn, says for himself that he is worth the sum of one thousand dollars over and above all debts by him owing, and all exemptions by law, in property situate in said county liable to execution; and further saith not.

GEO. A. MASON.
TIMOTHY BROWN.

Subscribed and sworn to before me this 12th day of April, A. D. 1870.

J. H. PALMER,
*Notary Public Dane Co., Wis.*

I approve of the within bond and sureties, and adjudge the same sufficient.

April 12th, 1870.

L. S. DIXON,
*Chief Justice Sup. Ct. Wis.*

35 UNITED STATES OF AMERICA:

To the State of Wisconsin:

Whereas Napoleon B. Van Slyke, plaintiff, lately issued out of the Supreme Court of the United States a writ of error directed to the supreme court of the State of Wisconsin, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court before the judges thereof between said plaintiff and you, a manifest error hath happened, to the great damage of the said plaintiff, Napoleon B. Van Slyke:

And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the Supreme Court of the United States, at the city of Washington, on the first Monday of December next:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Madison, the twelfth day of April, in the year of our Lord one thousand eight hundred and seventy.

L. S. DIXON,
*Chief Justice Sup. Ct. Wis.*

(Indorsed:) Supreme Court United States. Napoleon B. Van Slyke, pl'ff in error, vs. The State of Wisconsin, def't in error. Citation.

Service admitted on this 13th day of April, 1870.

S. S. BARLOW,
*Att'y Gen. Wis.*
THAD. C. POUND,
*Lieutenant and Acting Governor.*

Filed Apr. 12, 1870.

L. F. KELLOGG,
*Clerk Sup. Ct. Wis.*

36 STATE OF WISCONSIN, *Supreme Court:*

I, La Fayette Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original record and proceedings now remaining of record and on file in my office in the above-entitled cause, and that it is a correct transcript therefrom; and also a true copy of the bond for costs, and the original citation.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, the 10th day of October, A. D. 1870.

[SEAL.] LA FAYETTE KELLOGG,
*Clerk of Supreme Court of Wisconsin.*

(Indorsed:) State of Wisconsin supreme court. Napoleon B. Van Slyke, plaintiff in error, against The State of Wisconsin, defendant in error. Certified copy of record and proceedings. Fee for this copy, $10 75.

(Indorsement on cover:) No. 493. Napoleon B. Van Slyke, plaintiff in error, vs. The State of Wisconsin. Wisconsin supreme court. Filed 17th October, 1870.